

REMARKS:

Claims 1-22 are currently pending in the application, and have been rejected. New claims 23-25 have been added with this response, and find support in the claims as originally filed. New claim 23 corresponds to a claim proposal made by Applicants in response to a somewhat similar proposal made by the Examiner during a telephone interview with Applicants.

Reconsideration of the Examiner's rejection of claims 1 and 19 under 35 U.S.C. § 102(a) as being anticipated by U.S. 6,097,955 (Bhat) is respectfully requested.

The Examiner is respectfully reminded that, in order to anticipate a claimed invention, a cited reference must clearly teach each and every element of the claimed invention. In the present case, claim 1 requires different processing outcomes, depending on whether a message is (1) in a selected application format, or (2) is in a format that is different from the selected application format. The Examiner apparently interprets the "application format" of the message as being the identity of the message as a paging message or a regular call control message. However, the Examiner has failed to establish that these different types of messages have different "application formats" in the system of Bhat as required by the claims, as opposed to merely having different content. To the contrary, Bhat teaches, at Col. 1, Lines 20-23, that the same application processor "is used for both paging and for regular call control functions". This implies that both message types have the *same* application format, though ostensibly different *content*.

In her comments in the present Office Action, the Examiner states that

Application format is interpreted as format of the application which can be any format. The paging message is not in the application format of the regular call control message. The paging message is different format from the application format which is a regular call control message. The claim does not recite that the message is not the application but the claim recite the message is not in the application format. Therefore, Bhat's reference meets the claim limitation.

It is clear from these comments that the Examiner either did not read, or did not understand, Applicant's foregoing comment. In particular, even if the Examiner is correct in her assertion that "Application format is interpreted as format of the application which can be any

format”, this does not imply, nor has the Examiner established, that different formats are used for paging and call control functions. To the contrary, as noted above, Bhat teaches, at Col. 1, Lines 20-23, that the same application processor “is used for both paging and for regular call control functions”, which implies that both message types have the same application *format*, even if they have different *content*. Hence, should the Examiner choose to persist in the present rejection, she is hereby requested on the record to provide a suitable literature citation in support of her assertion that “The paging message is different format from the application format which is a regular call control message.” The Examiner is further respectfully requested to specify, on the record, the meaning she is assigning to the term “format”, since the meaning she is assigning to this term is not clear from her comments.

The Examiner has also exhibited an inclination, during the prosecution of the present application, to give claim terminology unreasonably broad interpretations, which render them virtually meaningless. This inclination is exemplified by the Examiner’s apparent interpretation of the term “application format”. However, the Examiner is respectfully reminded that she is not free to assign any meaning she wishes to claim terminology. Rather, claim terminology must be given the meaning that would be assigned to it by one of ordinary skill in the art. Thus, MPEP § 2111.01(I) provides that

During examination, the claims must be interpreted as broadly as their terms reasonably allow. ... This means that the words of the claim must be given their plain meaning unless ****>the plain meaning is inconsistent with<** the specification. [emphasis added]

MPEP § 2111.01(III) clarifies the meaning of MPEP § 2111.01(I), and is appropriately titled “PLAIN MEANING” REFERS TO THE ORDINARY AND CUSTOMARY MEANING GIVEN TO THE TERM BY THOSE OF ORDINARY SKILL IN THE ART”:

[T]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, *i.e.*, as of the effective filing date of the patent application.

In the present case, the art to which the present invention pertains is the art of information processing systems and networks. One skilled in this art would not interpret the term “application format” to mean “any format” as the Examiner suggests (and to the extent that “any

format” is even understandable). Rather, one skilled in this art would interpret the term “application format”, when used in reference to a message, as indicating whether the message is suitable for being processed by an application. Thus, for example, if the message is in an encrypted application format, then the message is in a format suitable for being processed by a decryption application. In the present case, when the term is properly construed, the Examiner has not established that the paging messages or regular call control messages of Bhat have a different application format. To the contrary, as noted above, Bhat teaches, at Col. 1, Lines 20-23, that the same application processor “is used for both paging and for regular call control functions”, which implies that both message types have the same application format. Hence, the Examiner has failed to establish a prima facie case of anticipation.

The Examiner is also respectfully reminded that she may not pick and choose among the teachings of a cited reference, taking only those teachings which support a given position, while ignoring others which teach away from it. Rather, a reference must be construed as a whole for what it fairly suggests to one skilled in the art. Thus, MPEP § 2142.01(VI) dictates that

A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983),

On pages 7-8 of its response of November 13, 2007, Applicant took issue with the Examiner’s assertion that claim 1 is anticipated by Bhat by pointing out that the Examiner’s interpretation of the term “application processor” was at odds with the meaning of that term set forth in the reference itself. Thus, Applicant argued that

However, the Examiner is respectfully reminded that he is not free to adopt an interpretation of a prior art reference which is at odds with the express teachings of the reference itself. In the present case, element 302 in the system of Bhat is explicitly labeled as the “application processor”, and this element specifically includes as components thereof the radio cluster servers 322-324 and the communication module 320 (see FIG. 3). Hence, the Examiner is not free to designate another element, such as the radio cluster servers 322-324 or elements hereof, as the “application processor” because to do so would be to disregard the explicit teachings of the reference.

With the foregoing understanding, it is clear that Bhat does not anticipate the presently claimed invention because, in the system described therein, the message is routed to the application processor whether or not it is a paging message (that is, whether or not, under the Examiner’s interpretation of Bhat, the

message is in the “selected application format”). Hence, the recited element of claim 1 is not met by the system of Bhat.

In the subsequent office action of January 25, 2008, the Examiner disagreed (somewhat obliquely) with Applicant’s argument, apparently on the grounds that the radio cluster servers may be designated as the “application processor” because they are components of the “application processor”. Thus, the Examiner noted that:

Applicant argued in substance that ... “it is not free to designate another element, such as the radio cluster server 322-324 or elements hereof, as the application processor”. ... As to [this point], Bhat teaches the radio cluster servers 322-324 are software modules within the CPU of the application processors 302 (col 6, 13-15).

In their subsequent response of March 21, 2008, Applicants disagreed with the Examiner. In particular, Applicants noted that it does not follow from the fact that the radio cluster servers may be *components* of the device denoted as the “application processor” in Bhat that the radio cluster servers *are* the “application processor”. Thus, Applicants noted that

In the present office action, the Examiner responds that Bhat teaches the radio cluster servers 322-324 are software modules within the CPU of the application processors 302 (col. 6, 13-15).

However, Applicants respectfully submit that this comment is not responsive the Applicants arguments, since the mere fact that the radio cluster servers are software modules within the CPU of the application processors of Bhat does not refute Applicants’ arguments, nor has the Examiner deigned to explain himself any further. If the Examiner means to say that the radio clusters may be considered to be the “application processor” because they are elements of the application processor 302 of Bhat, then Applicants respectfully note that the Examiner’s argument is logically flawed. By way of analogy, it does not follow from the fact that the Earth is an element of the universe that the Earth is the universe.

The foregoing distinction is not a matter of mere semantics, because the Examiner’s whole anticipation argument depends upon it. In particular, if the radio cluster servers are merely components of the application processor, rather than being the application processor itself, then claim 1 cannot be anticipated by Bhat, because claim 1 requires, in essence, that the “next location” to which the message is routed is distinct from the application processor. Thus, Applicants noted that:

Moreover, Applicants respectfully note that the Examiner's comment refutes his own argument. In particular, both the radio cluster servers 322-324 and the communication module 320 are components of the application processor 302. Consequently, the communication module 320 cannot be the "next location" as that term is used in claim 1, because claim 1 requires that the "next location" is distinct from the application processor. In particular, claim 1 specifically requires that:

if the message is in the selected format:

routing the message to a selected application processor;

processing the message by the selected application processor; and

routing the message to the next location.

Hence, for claim 1 to read on the system of Bhat, the "next location" would have to be the switching network 310. However, in the system of Bhat, the message is routed to the switching network 310 regardless of whether the message is a paging message or a regular call control message. Therefore, the Examiner's proposed interpretation of Bhat does not result in the claimed invention as required to support a rejection under 35 U.S.C. § 102(a).

Applicant's foregoing argument is not addressed in the Advisory Action dated April 18, 2008, or in the present office action. In light of the foregoing, however, it will be appreciated that the Examiner has either misinterpreted the term "application processor" which appears in claim 1, or has failed to explain how Bhat teaches every element of the claimed invention. In either case, the Examiner has failed to establish a prima facie case of obviousness with respect to claim 1.

With respect to claim 19, the Examiner cursorily rejects this claim on the same grounds as claim 1, reasoning that "it is an apparatus claim of claim 1". However, Applicants respectfully note that, contrary to the Examiner's assertion, 19 is a method claim, not an apparatus claim.

Moreover, claim 19 contains features not found in claim 1. For example, claim 19 does not use the term "application format", but rather involves ascertaining whether "the message is susceptible to be processed by a particular application" (the Examiner interprets the "particular application" to be the radio cluster servers 322-324). If so, the message is routed to an

application service device, and if not, the message is routed to a second location. However, in the system of Bhat, both paging messages and normal call control messages are “susceptible to be processed by” the radio cluster servers 322-324. **This point is clearly demonstrated by the fact that, in the prior art system depicted in FIG. 2 of Bhat, both types of messages are processed by the radio cluster servers.** Indeed, the whole point of Bhat was to improve on this situation. However, the fact that Bhat, in its preferred embodiment, chooses to preserve CPU resources by routing paging messages directly to the communication module 224 rather than to radio cluster servers 322-324 does not render them *unsusceptible* to being processed by the radio cluster servers.

Since both types of messages are “susceptible to be processed” by the radio cluster servers, then under the Examiner’s interpretation of Bhat, claim 19 requires that both types of methods be routed to the radio cluster servers. Clearly, this does not happen in Bhat. Therefore, claim 19 is clearly not anticipated by Bhat.

Reconsideration of the Examiner’s rejection of claims 2-6 and 20-21 under 35 U.S.C. § 103(a) as being anticipated by U.S. 6,097,955 (Bhat) in view of U.S. 5,764,912 (Rosborough) is respectfully requested.

As a preliminary matter, Applicants note that the Examiner’s rejection is legally flawed. In particular, the rejection is said to be based on anticipation, but relies on a proposed combination of references which would only be proper under a theory of obviousness. Should the Examiner choose to maintain this rejection, then appropriate correction is required in the next office action. Otherwise, Applicants will take this to mean that the Examiner did in fact intend this to be a novelty rejection, and may appeal the rejection on those grounds.

With respect to claims 2-5, Applicants note that Rosborough does not cure any of the infirmities noted above with respect to the base reference. Therefore, the proposed combination of Bhat and Rosborough fails to teach or suggest all of the elements of the claimed invention, as required to support a prima facie case of obviousness.

Moreover, the Examiner is respectfully reminded that proper incentive must exist in order to combine the teachings of two or more references so as to support a prima facie case of obviousness. In the present case, the Examiner suggests that

It would have been obvious to one of the ordinary skill in the art at the time the invention was made to modify the teachings of Bhat with Rosborough to incorporate the features of Bhat with Rosborough to incorporate the feature of the message includes receiving a packet because this provides a method for identifying a transaction comprising a plurality of service packets communicated between source and destination nodes that includes the steps.

However, Applicants respectfully note that the Examiner has engaged in circular reasoning in making this rejection. In particular, the Examiner is arguing, in essence, that it would be obvious to add packets to the method of Bhat, because Rosborough discloses a method of identifying packets. However, one does not need to identify packets in the system of Bhat if they are not there in the first place.

Moreover, since Bhat relates to a communications network for sending messages, it is clear that those messages need to be “identified” so that the sender and intended recipient can be ascertained. That being the case, there is no incentive to combine the references as proposed by the Examiner, because the functionality of identifying a transaction is already inherent in the methodology of Bhat, even if the transaction is not packet based. For example, Col. 1, Lines 44-49 provide that

When a calling party first attempts to reach a called party having a mobile station within a cellular communications system, paging is necessary to determine the current location of the mobile station of the called party. The mobile station may be located in any of the cells of the cellular communications system.

It is clear from the foregoing, then, that it is necessary for the network in Bhat to identify a transaction in order for it to work for its intended purpose.

With respect to claims 6 and 21-22, the Examiner has not advanced any grounds for rejecting these claims over the proposed combination of references. Therefore, the Examiner is respectfully requested to withdraw the rejection of these claims on the basis of the cited references. The Examiner is cautioned that, if she presents this rejection in the next office action and makes that office action final, Applicants will file a petition to withdraw the finality of the

rejection, based on the failure of the Examiner to provide any reasoned basis for the rejection in the present office action.

Reconsideration of the Examiner's rejection of claims 2-6 and 20-21 under 35 U.S.C. § 103(a) as being anticipated by U.S. 6,097,955 (Bhat) in view of U.S. 6,061,796 (Chen) is respectfully requested.

As a preliminary matter, Applicants note that the Examiner's rejection is legally flawed. In particular, the rejection is said to be based on anticipation, but relies on a proposed combination of references which would only be proper under a theory of obviousness. Should the Examiner choose to maintain this rejection, then appropriate correction is required in the next office action. Otherwise, Applicants will take this to mean that the Examiner did in fact intend this to be a novelty rejection, and may appeal the rejection on those grounds.

With respect to claims 2-5, the Examiner has not advanced any grounds for rejecting these claims over the proposed combination of references. Therefore, the Examiner is respectfully requested to withdraw the rejection of these claims on the basis of the cited references. The Examiner is cautioned that, if she presents this rejection in the next office action and makes that office action final, Applicants will file a petition to withdraw the finality of the rejection, based on the failure of the Examiner to provide any reasoned basis for the rejection in the present office action.

With respect to claim 6, the Examiner concedes that Bhat does not disclose the element of

ascertaining whether the message is in a selected application format
includes ascertaining whether the message is encrypted; and
processing the message by the selected application processor includes
decrypting the message by the selected application processor

but relies in Chen et al. for these teachings. However, the Examiner is respectfully reminded that it is insufficient, for the purposes of establishing a prima facie case of obviousness, to merely find two references which, between them, happen to disclose all of the features of a claimed invention. Rather, the examiner must establish that one skilled in the art would have incentive to

combine the teachings of the reference in the manner required so as to arrive at the claimed invention. In the present case, no such incentive exists.

The Examiner suggests that one skilled in the art would have incentive to combine the teachings of the references because

[T]his provides data encryption and mutual authentication services for both client/server and peer-to-peer applications at the applications, transport driver, and network driver levels.

However, even if one skilled in the art would have incentive to encrypt messages in the system of Bhat, this would not lead to the claimed invention, because claim 6 requires more.

In particular, claim 6 requires “ascertaining whether the message is in a selected application format includes ascertaining whether the message is encrypted” and “processing the message by the selected application processor includes decrypting the message by the selected application processor.” Even if it is assumed to be true that the methodology of Chen et al. provides encryption functionality, the Examiner has already chosen to interpret the “application format” required by claim 1 to be the status of a message as a paging message or a call control message in Bhat. Since claim 6 depends on claim 1, and since claim 6 essentially requires that the application format be that the message is either encrypted or not encrypted, the Examiner cannot now assign a different meaning to the term “application format”. Rather, the Examiner must show that all of the limitations of claim 1 are met if the application format is taken as the status of the message as being encrypted or not encrypted. The Examiner has failed to make such a showing. Therefore, the Examiner has not established a prima facie case of obviousness.

With respect to claims 20-21, the Examiner cursorily rejects this claim on the same grounds as claim 1, reasoning that “it is an apparatus claim of claim 1”. However, Applicants respectfully note that, contrary to the Examiner’s assertion, claims 20-21, which depend from claim 19, are method claims, not apparatus claims. Moreover, Chen et al. does not overcome the deficiencies noted with respect to base claim 19, nor does it overcome the deficiencies noted with respect to claim 6, which contains similar elements to those of claims 20-21.

Should the Examiner have any questions or desire clarification of any sort, the Examiner is invited to telephone the undersigned at the number listed below. Please reference Attorney Docket No. LYRN004US0.

All fees due with this submission have been paid; however, if a further fee is due or a credit deemed appropriate, the Commissioner is hereby authorized to charge such fee or assign such credit to Deposit Account No. 50-3694 of Fortkort & Houston P.C.

Respectfully submitted,

FORTKORT & HOUSTON P.C.

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By: / John A. Fortkort /
John A. Fortkort
Reg. No. 38,454
ATTORNEY FOR APPLICANTS

9442 N. Capital of Texas Hwy.
Arboretum Plaza One, Suite 500
Austin, Texas 78759
Tel: (512) 343-4525
Fax: (512) 343-4530
jfortkort@foholaw.com